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ATTORNEYS FOR PLAINTIFF
ADASA INC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

ADASA INC.,

Plaintiff,

v.

AVERY DENNISON CORPORATION,

Defendant.

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Case No.: 6:17-cv-01685-MK

**PLAINTIFF'S MOTION TO SEVER
AND STAY CERTAIN CLAIMS**

JURY TRIAL DEMANDED

LR 7-1 CERTIFICATION

Pursuant to Local Rule 7-1(a)(1)(A), Plaintiff ADASA Inc. (“Plaintiff” or “ADASA”) certifies that its counsel of record has conferred in good faith with counsel for Defendant Avery Dennison Corporation (“Avery Dennison”) regarding the subject matter of this motion in an effort to resolve the issues raised herein, but that the parties have not been able to fully resolve this matter and thus a portion of the request is presented to the Court.

ARGUMENTS AND AUTHORITIES

On September 14, 2020, this Court issued its latest order on the parties’ motions for summary judgment, including Plaintiff’s motion for partial summary judgment on infringement. *See* Dkt. No. 205. Within that order, the Court granted Plaintiff summary judgment of infringement on its direct infringement claims under 35 U.S.C. 271(a), (b), and (f) for independent claims 1 and 13 of the patent-in-suit as to all “Commissioning Authority/PCTag” products and found that the “Commissioning Authority” only products meet the preamble and Elements A-E of the same claims.¹

In order to streamline the trial and the presentation of evidence to the jury, ADASA respectfully requests that the Court sever and stay ADASA’s claims of indirect infringement (infringement under 35 U.S.C. 271(b) and (c)). This will allow both sides to focus on direct infringement only of claims 1 and 13 for the remaining “Commissioning Authority” only products at trial. Avery Dennison has indicated that it does not oppose this relief.

Similarly, and for the same reasons, ADASA respectfully requests that the Court also sever and stay ADASA’s claims of infringement of the asserted dependent claims (claims 2-5, 14-15). Given the Court’s summary judgment order, severing and staying these claims would promote efficiency at trial and would allow the jury to focus on a limited set of infringement issues, given the one remaining element in dispute. Avery Dennison has indicated that it does oppose this portion of ADASA’s relief.

¹ In its motion, Plaintiff did not move for summary judgment on the asserted dependent claims in this action (claims 2-5, 14-15).

As such, ADASA respectfully requests that both the indirect infringement claims, and ADASA's claims of infringement of the dependent claims, be stayed and severed. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997) (A district court has "broad discretion to stay proceedings as an incident to its power to control its own docket."); *Cont'l Cas. Co. v. Landmark Hotels, LLC*, 2004 U.S. Dist. LEXIS 28062, at *3 (C.D. Cal. Apr. 26, 2004) ("The Court has broad discretion to sever claims and counter-claims under Fed. R. Civ. P. 42(b).").²

DATED: November 16, 2020

Respectfully submitted,

By: /s/ Glenn S. Orman

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² Avery Dennison has indicated that it will be appealing at least portions of the Court's summary judgment orders, regardless of the outcome of trial. ADASA is seeking the severance and stay of the above claims only with respect to a scenario where the Court's summary judgment order is reversed on appeal and the issue of infringement is sent back to this Court. In such an event, ADASA would seek to reinstate its dependent claims and indirect infringement claims. However, if such an appeal was not successful, ADASA would not be seeking to reassert the claims identified in this motion.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th of November, 2020, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, District of Oregon, Eugene Division using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Glenn S. Orman